83 - 1359

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

CHARLES H. LANDFRIED, SR.,
JAMES A. RASH, and
WILLIAM E. JACKSON,
Petitioners,

vs.

TERMINAL RAILROAD ASSOCIATION
OF ST. LOUIS, a Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

Whether Federal District Courts have jurisdiction to act when a railroad employee has been discharged for filing an FELA claim.

Whether the Railway Labor Act supersedes the rights of railroad employees in actions based on the Federal Employers Liability Act.

Whether a railroad employee, by virtue of asserting an FELA claim, should be subjected to losing his job.

Whether the Railway Labor Act precludes railroad employees from exercising their First and Seventh Amendment rights when they have been discharged for filing an FELA claim.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 721 F.2d 254 (8th Cir. 1983) and appears in Appendix A hereof. The orders of the District Court dated December 15, 1982 and January 14, 1983 are reported and appear in Appendices B and C.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on November 22, 1983. This Petition for Certiorari was filed within 90 days after the judgment of the United States Court of Appeals. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment to the United States Constitution

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Seventh Amendment to the United States Constitution

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

STATUTORY PROVISIONS INVOLVED

UNITED STATES CODE, TITLE 45
FEDERAL EMPLOYERS LIABILITY ACT

Sec. 51 Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence;

Every common carrier by railroad while engaging in commerce between any of the several States or Territories...shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce...resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Sec. 55. Contract, rule, regulation, or device exempting from liability; set-off;

Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void...

Sec. 60. Penalty for suppression of voluntary information incident to accidents;

Any contract, rule, regulation, or device whatsoever, the purpose, intent, or effect of which shall be to prevent employees of any common carrier from furnishing voluntary information to a person in interest as to the facts incident to the injury or death of any employee, shall be void, and whoever, by threat, intimidation, order, rule, contract, regulation, or device whatsoever, shall atempt to prevent any person from furnishing voluntarily such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing voluntarily such information to a person in interest, shall, upon conviction thereof, be punished by a fine of not more than $1,000.00 or imprisoned for not more than one year, or by both such fine and imprisonment, for each offense...

UNITED STATES CODE, TITLE 45
RAILWAY LABOR ACT

Sec. 151a.General Purposes

The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein;... (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Sec. 153. First (i) National Railroad Adjustment Board-Establishment; composition; powers and duties; divisions; hearings and awards; judicial review

The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions,...shall be handled in the usual manner up to and including the chief operating officer of the carrier designed to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the (NRAB) with a full statement of facts and all supporting data bearing upon the disputes.

STATEMENT OF THE CASE

Plaintiff, Charles H. Landfried, Sr., a clerk for over forty years with the Terminal Railroad was discharged after notifying the railroad of his intention to file an FELA claim. Landfried was injured on January 30, 1980 and notified the railroad of this intention to sue in May of 1982. At that time Landfried was not sure of the exact date of the occurrence but thought it was about November of 1979. The railroad held an investigation and discharged Landfried for failure to file a personal injury form. In fact, Landfried had filed the required form and the railroad had it in its possession. Even after this was brought to the attention of the Terminal, it persisted in the termination.

James Rash was a yardmaster injured when he tripped over debris obscured by a rail. After he filed suit, the Terminal held an investigation and discharged him.

William Jackson, a black bridge welder, was injured while lifting. After filing an FELA claim, he was discharged for insubordination.

All three individuals pursued their administrative remedies pursuant to the Railway Labor Act and simultaneously filed original actions in the District Court for injunctive relief as well as for compensatory and punitive damages.

As of the time of preparing this Petition, Landfried's labor claim was still pending, Rash's claim was allowed and Jackson's denied.

The District Court and the United States Court of Appeals ruled that Petitioners' sole remedy was arbitration.

REASONS FOR GRANTING THE WRIT

1. This Court Has Never Reviewed The Rights Of A Railroad Employee Discharged For Filing An FELA Claim And Guidance Is Required.

The primary reason cited by the Court below for rejecting the claims asserted was that the holding of *Andrews* v. *Louisville & Nashville Railroad,* 406 U.S. 320 (1972) gave the Adjustment Board exclusive jurisdiction where a railroad employee complains of wrongful discharge. However, *Andrews* did not involve the FELA and as far as can be determined, this Court has never decided what rights a railroad employee has when discharged for filing an FELA claim. The decision in *Landfried,* together with the decision in *Jackson* v. *Consolidated Rail Corporation,* 717 F.2d 1045 (7th Cir. 1983) allow the railroads to summarily discharge employees for filing claims, secure with the knowledge that no court can or will intervene. The message to employees is equally clear: you may file your FELA claim but the price may well be your job.

The FELA was passed by the Congress due to the extrahazardous nature of railroad work. The law was passed because Congress was dissatisfied with the common law defenses. This Court has held that any negligence, even the slightest, will support a finding in favor of the employee. *Rogers* v. *Missouri Pacific Railroad Co.,* 352 U.S. 500 (1957).

Yet, these protections are meaningless if the employee wins his lawsuit and loses his job. Very few employees will have the fortitude to file a claim for injuries when the result may also include the loss of their employment. Such a threat renders the FELA virtually meaningless. That is why this Court should clarify its decision in *Andrews* vis-a-vis the FELA. Otherwise claimants are in a position where the Railway Labor Act in effect supersedes the FELA.

2. There Is A Conflict Among The Circuits And This Court Should Resolve It Due To The Extemely Sensitive Public Policy Consideration Involved.

In *Hendley* v. *Central of Georgia Railroad Co.*, 609 F.2d 1146 (5th Cir. 1980), Cert. denied, 449 U.S. 1093 (1981), the Plaintiff was discharged for helping a fellow employee with his FELA claim. Hendley appealed to the Labor Board and was ultimately reinstated. He nevertheless filed suit in District Court asking that the railroad be enjoined from using its disciplinary procedures as a device to defeat FELA claims. The Court ruled in favor of the Plaintiff holding that:

> "A plaintiff may not be denied access to the federal courts when his employer uses its grievance procedures and disciplinary powers in direct violation of this statute. If an employee can show that the object of a railroad's investigation is to discipline the employee for furnising information in an FELA case, then injunctive relief by a federal district court is appropriate if not compelled." 609 F.2d at 1152.

The Court below distinguished *Hendley* on the basis that it was based on a statute, specifically 45 U.S.C. Sec. 60. Section 60 provides:

> "Any contract, rule, regulation, or device whatsoever, the purpose, intent, or effect of which shall be to prevent employees of any common carrier from furnishing voluntary information to a person in interest as to the facts incident to the injury or death of an employee, shall be void, and whoever, by threat, intimidation, order, rule, contract, regulation, or device whatsoever, shall attempt to prevent any person from furnishing voluntarily such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing voluntarily such information to a person in interest, shall, upon conviction thereof, be

> punished by a fine of not more than $1,000.00 or imprisoned for not more than one year, or by both such fine and imprisonment, for each offense."

Section 60 is very similar to Section 55 of 45 U.S.C. which provides:

> "Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void."

The Court below, however, relied upon a ruling of the United States Court of Appeals for the Ninth Circuit which held that Section 55 does not provide a cause of action for an employee discharged in retaliation for filing an FELA claim. *Bay* v. *Western Pacific Railroad,* 595 F.2d 514 (9th Cir. 1979). Yet the Fifth Circuit has decided that when Section 60 is violated "(T)his is a matter properly within the jurisdiction of the federal courts and is not a question to be determined by the Administrative Board".

The Court below indicated they might reach a different result if plaintiffs could show that their discharge violated a specific Federal Statute. If a violation of Section 60 is actionable, it seems to be splitting hairs to say that a violation of Section 55 is not. Moreover, if Section 55 does not grant such a right, the FELA by implication should recognize such a right. Otherwise the statute is self-defeating.

In *Smith* v. *Atlas Off-Shore Boat Services, Inc.*, 653 F.2d 1057 (5th Cir. 1981) the Fifth Circuit implied a right of action from the Jones Act in allowing a retaliatorily discharged seaman a right of action stating at page 1063:

> "The employer should not be permitted to use his absolute discharge right to retaliate against a seaman for seeking to recover what is due him or to intimidate the seaman from seeking legal redress. The right to discharge at will should

not be allowed to bar the courthouse door. Nor does the struggle affect only the employer and the seaman. To permit the seaman's discharge because he resorts to the courts may result in casting the burden of the employer's reprisal in part on the public in the form of unemployment compensation or social security for the worker or his family."

While seamen are obviously at will employees not covered by the Railway Labor Act, the same policy provisions ought to apply to railroad workers. More importantly, *Smith* recognizes that a right of action may be implied from a statutory scheme as a whole as opposed to a specific statute.

This Court has, for example, recognized an implied cause of action based on violation of Constitutional rights and has done so without first requiring parties to exhaust their administrative remedies. *Carlson* v. *Green*, 446 U.S. 14 (1980); *Davis* v. *Passman*, 442 U.S. 228 (1979); *Bivens* v. *Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

There is a significant difference between *Landfried* and *Jackson* v. *ConRail*, 717 F.2d 1045 (7th Cir. 1983). In *Jackson* the claim was based on Indiana common law. In *Landfried* it is urged that the right be based either on 45 U.S.C. Sec. 55 or be implied from the FELA as a whole. It is requested that this Court recognize the right to injunctive relief; or recognize a new federal tort of retaliatory discharge; or both. The public policy consideration recognized by the states should apply equally to railroad workers see, *Kelsay* v. *Motorala, Inc.*, 74 Ill. 2d 172, 384 N.E.2d 353 (1979); *Frampton* v. *Central Indiana Gas Co.*, 297 N.E.2d 425 (1973); *Sventko* v. *Kroger Co.*, 69 Mich.App. 644, 245 N.W.2d 151 (1976); *Peterman* v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 396, 174 Cal.2d 184, 344 P.2d 25 (1959); Jackson* v. *Minidoka Irrigation District*, 98 Idaho 330, 563 P.2d 54 (1977); *Cloutier* v. *Great Atlantic & Pacific Tea Co.*, N.H., 436 A.2d 1140 (1981); *Pierce* v. *Ortho Pharmaceutical Corp.*, 166 N.J. Super. 335, 399 A.2d 1023 (1979).

3. When An Employee Is Discharged For Filing An FELA Claim, The Remedy Provided By The Public Law Boards Is Inadequate.

It has become almost impossible to obtain adequate relief from a Public Law Board. According to the Administrator for the National Mediation Board during 1982 the NRAB ran out of funds by June 30, leaving twenty-one thousand cases in limbo. Administrator Mary C. Pricci is further quoted as saying that the Public Law Boards created in 1966 have barely kept up with demand. The *United Transportation Union News,* Vol. 14, No. 22, August 22, 1982.

In 1983 the National Mediation Board notified all neutrals performing work under Section 3 of the Railway Labor Act to terminate all compensable service as of May 31 due to insufficient funds. The *United Transportation Union News,* Vol. 1, No. 11, May 7, 1983.

One of the reasons this Court cited in 1966 for no longer following *Moore* v. *Illinois Central R. Co.*, 312 U.S. 630 (1941) was that while previously the Board had never been current, the 1966 Amendment drastically revised the procedures in order to remedy the defects. *Walker* v. *Southern Railway Co.*, 385 U.S. 196 (1966). The sad fact is that the drastically revised procedures are not working. "The fact that the employee may ultimately prevail is of little assurance to one who faces possible unemployment for a year or more." *Hendley* v. *Central of Georgia R. Co.*, 609 F.2d 1146, 1153 (5th Cir. 1980).

There is also a question whether the opinion below has violated the Petitioners' First and Seventh Amendment rights. *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650, 659 (1965) *(dissenting opinion).* Everyone who joins a union does not give up his civil rights. *Andrews* v. *Louisville & Nashville Railroad Co.*, 406 U.S. 320, 326 (1972) *(dissenting opinion).*

CONCLUSION

Wherefore, Petitioners request a Writ of Certiorari to review the judgment of the United States Court of Appeals which held that the District Court was without jurisdiction to hear a suit by Petitioners against a railroad for the railroad's interference and retaliatory conduct with the Petitioners' FELA personal injury suit.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-1160

Charles H. Landfried, Sr.,
James A. Rash, and William E.
Jackson,
Appellants,

v.

Terminal Railroad Association
of St. Louis, a Corporation,
Appellee.

Appeal from the United
States District Court for
the Eastern District of
Missouri

Submitted: September 15, 1983

Filed: November 22, 1983

Before LAY, Chief Judge, HENLEY, Senior Circuit Judge, and BOWMAN, Circuit Judge.

BOMAN, Circuit Judge.

The district court granted defendant Terminal Railroad Association of St. Louis' motion to dismiss plaintiffs' Amended Complaint (the complaint) for failure to exhaust administrative remedies and failure to state a claim. Plaintiffs appeal from that decision. We affirm.

Plaintiffs are former employees of defendant. They allege that defendant discharged them in retaliation for their bringing actions against defendant under the Federal Employers' Liability Act, 45 U.S.C. §§ 51-60 (FELA). They contend that this kind of discharge is actionable as a matter of federal law and policy and that the federal courts have jurisdiction to adjudicate their claims. The sole question presented in this appeal is whether plaintiffs' claims are judicially cognizable in an action filed in a federal district court, or whether, as the district court held, such claims are within the exclusive jurisdiction of the National Railroad Adjustment Board (the Adjustment Board).

Two federal statutes are involved in this case. The FELA confers upon railroad employees a right to recover from their employers for injuries suffered as a result of any negligence, however slight, by the employer. *Rogers* v. *Missouri Pacific Railroad Co.*, 352 U.S. 500 (1957). Separate from the FELA is the Railway Labor Act, 45 U.S.C. §§ 151-188 (RLA), the purpose of which is to promote stability in labor-management relations in the national railroad industry. *Union Pacific Railroad Co.* v. *Sheehan*, 439 U.S. 89, 94 (1978).

Among the provisions of the RLA for the resolution of disputes between railroads and their employees is 45 U.S.C. § 153 First(i), which provides as follows:

> The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and

> including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

In construing this provision of the RLA, the Supreme Court has held that disputes between an employee and a railroad concerning the interpretation of the terms of a collective bargaining agreement are within the exclusive jurisdiction of the Adjustment Board. *Andrews* v. *Louisville and Nashville Railroad,* 406 U.S. 320 (1972). *See Raus* v. *Brotherhood Railway Carmen of the United States and Canada,* 663 F.2d 791 (8th Cir. 1981). The Adjustment Board has exclusive jurisdiction even where the employee complains of a wrongful discharge by the railroad. *Andrews, supra.*

The plaintiff in *Andrews* was a railroad employee who was unable to work for some time after he was involved in an automobile accident. When Andrews felt that he was able to resume work, the railroad refused to allow him to return. Andrews severed his connection with the railroad, treated its refusal to allow him to work as a wrongful discharge, and sought damages in a Georgia state court. After the railroad removed the case to federal court, both the district court and the court of appeals held that Andrews' wrongful discharge claim was barred because he had failed to exhaust his administrative remedies under the RLA. The Supreme Court affirmed the dismissal of Andrews' suit, emphasizing that the only source of his right not to be discharged, and therefore to treat the alleged discharge as wrongful, was the collective bargaining agreement between the employer and the union. Reasoning that Andrews' claim, and the railroad's disallowance of it, stemmed from differing interpretations of the collective bargaining agreement, the Court held that such discharge grievances are subject to compulsory arbitration under the RLA.

Andrews is, of course, distinguishable from the present case inasmuch as Andrews was not discharged in retaliation for filing a FELA claim. The Supreme Court has not yet ruled on the applicability of *Andrews* to claims of the kind plaintiffs assert here, and the question is one of first impression in this circuit. We note, however, that the complaint includes allegations that in discharging plaintiffs the railroad failed to comply with the requirements of the collective bargaining agreement entered into between the railroad and plaintiffs' respective unions.[1] Defendant, on the other hand, contends that plaintiffs were discharged for having violated various safety and work rules, all arguably in a manner consistent with the agreements between defendant and the unions of which plaintiff s were members. Thus, it appears that resolution of plaintiffs' claims will depend at least in part on interpretation of the applicable collective bargaining agreements. Under *Andrews* such claims are subject to the RLA's provisions for the processing of grievances and the federal courts are barred from ajudicating them. *See Magnuson* v. *Burlington Northern, Inc.*, 576 F.2d 1367 (9th Cir.), *cert. denied*, 439 U.S. 930 (1978).

Our conclusion that plaintiffs are barred from litigating their claims in federal court is consistent with recent decisions in the Seventh and Ninth Circuits, which appear to be the only other circuits that have ruled on the justiciability of retaliatory discharge claims of the kind here presented. *See Jackson* v. *Consolidated Rail Corporation*, Nos. 82-2362, 82-2363 (7th Cir. Sept. 1, 1983); *Bay* v. *Western Pacific Railroad Company*, 595 F.2d 514 (9th Cir. 1979).

We might reach a different conclusion if, as in *Hendley* v. *Central of Georgia Railroad Co.*, 609 F.2d 1146 (5th Cir. 1980), *cert. denied*, 449 U.S. 1093 (1981), plaintiffs could show that

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[1] *See* Designated Record at 1-29. These allegations are found in paragraph 7 of each count of the complaint.

their discharge constitutes the violation of a specific federal statutory section. But we do not need to decide whether we would adopt the view taken by the Fifth Circuit in *Hendley*, for the fact is that Congress has not enacted a statute prohibiting an employer from discharging an employee in retaliation for filing a FELA action. Given the availability to plaintiffs of recourse to the arbitration procedure established under the RLA, there is little reason for a federal court to imply a right of action where Congress has not acted to create one. Although the language of 45 U.S.C. § 55 delclares "void" any "device" utilized by a common carrier to exempt itself from FELA liability, that section does not provide a cause of action for an employee discharged in retaliation for filing a FELA action. *See Bay* v. *Western Pacific Railroad, supra.* In *Bay*, the court traced the legislative history of § 55 and concluded that Congress' purpose was to void contracts discharging the common carrier from liability for personal injuries suffered by its employees. "[Section 55] was not intended to afford a cause of action, separate from that for recovery of damages for injury under FELA, against an employer that engages in a device to exempt itself from FELA liability." *Id.* at 516 (footnote omitted).

Plaintiffs urge in support of their position the decision in *Smith* v. *Atlas Off-Shore Boat Service, Inc.*, 653 F.2d 1057 (5th Cir. 1981). In *Smith*, the plaintiff alleged that he was discharged as a seaman in retaliation for filing a personal injury claim against his employer pursuant to the Jones Act, 46 U.S.C. § 688. The Fifth Circuit recognized Smith's action for retaliatory discharge as a "maritime tort." *Id.* at 1063. *Smith*, however, is clearly distinguishable from the present case in at least two significant ways. First, Smith was an at-will employee; absent recognition of the maritime tort, he would have had no forum in which to press his claim. Second, in *Smith* the preclusive effect of the RLA was not at issue.

Each of the plaintiffs is processing his grievance through the appropriate administrative procedures. Each has the opportuni-

ty to pursue these procedures further. Plaintiffs argue, however, that review of their claims by the Adjustment Board is a lengthy and cumbersome proceeding with delays of two years or more. But such delays exist, if in fact they do, is regrettable. But such matters are properly the subject of congressional concern. It would be unsound for this court to make the question whether plaintiffs can maintain this action in the federal courts depend upon our determination as to how effectively the Adjustment Board is preforming its congressionally mandated task. *See Walker* v. *Southern Railway Co.*, 385 U.S. 196, 201 (1966) (Harlan, J., dissenting).

The judgment of the district court is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 82-1132

Charles H. Landfried, Sr.,
James A. Rash, and William E.
Jackson,
Plaintiffs,

v.

Terminal Railroad Association
of St. Louis,
Defendant.

MEMORANDUM AND ORDER

(Filed Dec. 15, 1982)

This matter is before the Court on defendant's motion to dismiss plaintiffs' complaint for failure to exhaust administrative remedies and failure to state a claim. Both sides have filed memoranda in support of their respective positions.

According to plaintiffs' complaint, this action is brought pursuant to the Federal Employer's Liability Act, 45 U.S.C. §51 *et seq.*, the Railway Labor Act, 45 U.S.C. §151 *et seq.*, 42 U.S.C. §1983, and "the Public Policy of the United States." essentially, plaintiffs complain of wrongful discharge from employment with defendant and seek both injunctive and monetary relief.

Defendant argues that under the Railway Labor Act, 45 U.S.C. §153 First(i), disputes between an employee and a railroad concerning the interpretation of a collective bargaining agreement are within the exclusive jurisdiction of the National Railroad Adjustment Board (NRAB). Accordingly, defendant

argues, because plaintiffs have not exhausted their remedies before the NRAB, the Court lacks subject matter jurisdiction over this action.

Defendant's contention that the NRAB has exclusive jurisdiction over disputes concerning the collective bargaining agreement between employees and railroads is correct. *Andrews* v. *Louisville & Nashville R.R. Co.*, 406 U.S. 320 (1972); *Raus* v. *Brotherhood Ry. Carmen*, 663 F.2d 791 (8th Cir. 1981). However, only disputes that are considered "minor" need first be brought to the NRAB. *Brotherhood of R.R. Trainmen of Chicago River & Indiana R.R. Co.*, 353 U.S. 30, 33 (1957). "Minor disputes" are defined as "controversies over the meaning of an existing collective bargaining agreement in a particular fact situation, generally involving only one employee." "Major disputes" are those "which result when there is a disagreement in the bargaining process for a new contract." *Id.* at 33.

In this action plaintiffs are complaining of wrongful discharge. In *Andrews, supra,* the Court held that complaints of a wrongful discharge are "minor disputes" under the Railway Labor Act. *Andrews,* 406 U.S. at 324. There, the Court set forth an exhaustive analysis of why such complaints must be addressed to the administrative process before judicial proceedings can be initiated. *Id.* Accordingly, the Court holds that plaintiffs here must first pursue their administrative remedies before they may proceed in court.

Plaintiffs' complaint is also brought under 42 U.S.C. §1983. Notwithstanding its ruling on the issue of exhaustion, the Court feels compelled to address the question of plaintiffs' §1983 claim. A prerequisite to success on a §1983 claim is a showing that a defendant acted "under color of state law." *Wallach* v. *Cannon*, 357 F.2d 557 (8th Cir. 1966). After careful review of plaintiffs' complaint, the Court is aware of no way in which plaintiffs' allegations could be taken as meeting this requirement. Accordingly, plaintiffs have failed to state a cause of action under 42 U.S.C. §1083.

In accordance with the foregoing,

IT IS HEREBY ORDERED that defendant's motion to dismiss be and is GRANTED.

IT IS FURTHER ORDERED that plaintiffs' complaint be an is DISMISSED without prejudice.

Dated this 15th day of December, 1982.

Edward L. Filippine
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARLES H. LANDFRIED, SR., JAMES A. RASH, and WILLIAM E. JACKSON,

Plaintiffs,

v.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,

Defendant.

No. 82-1132-C(3)

Denied
E. R. Filgo
1-14-83

MOTION TO AMEND, ALTER, AND RECONSIDER

Now come the Plaintiffs, by their undersigned attorneys, and move that the Court enter an Order amending, altering or reconsidering its Order of December 15, 1982 dismissing Plaintiffs' Complaint without prejudice, and as grounds therefore state as follows:

1. The Order of the Court did not take into account the case of Hendley v. Central of Georgia R. Co., 609 F.2d 1146 (5th Cir. 1980).

2. That in an identical case another Division of this Court has tentatively denied a Motion to Dismiss based upon the Hendley case, a copy of which Order is attached hereto and made a part hereof.

WHEREFORE, Plaintiffs pray that this Court enter an Order altering, amending, and otherwise reconsidering its previous Order dismissing said Complaint.